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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2841 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MADRSA MOHAMMEDIYAH AND PANJATNIYAH SOCIETY

Versus

STATE OF GUJARAT

Appearance:

MR AJ SHASTRI for Petitioner

M/S PATEL ADVOCATES for Respondent No. 1

NOTICE SERVED for Respondent No. 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 07/03/2000

ORAL JUDGEMENT

1. Rule. Mr.M.A.Bukhari, learned Assistant Government Pleader, appears and waives the service of the rule on behalf of the respondents. In the facts and circumstances of the case, the matter is taken up for final hearing today.

2. This petition is filed for quashing and setting aside the order passed by the Under Secretary, Education Department, Gandhinagar on February 11, 1999 informing the petitioner that in accordance with the resolution passed on December 9, 1998 cancelling the instructions issued on April 9, 1992 and by way of economic measure the amount of grant will not be paid to the petitioner considering the financial condition of the Government.

3. The case of the petitioner was that, permission was granted to open Std.VII on December 4, 1981 from 1981-82. Hence, the petitioner was entitled to get grant, but it was not paid. Many representations were made, but nothing was done in the matter. It was also stated that, from 1991-92 regular demands were made and attention of the authority was invited to the fact that such grant was paid to other schools. It was so stated in application/representation dated November 27, 1998 Annexure-D to the petition. Copies of orders passed in favour of other schools were also sent alongwith recommendation of the District Primary Education Officer. However, without affording an opportunity of hearing, an order was passed on February 11, 1999 - Annexure-E to the petition, which is challenged by the petitioner.

4. It was contended that the action of the respondent authorities was arbitrary, unreasonable and discriminatory. To similarly situated institutions, benefits were extended by the State Government. It was also contended that, before passing the impugned order, opportunity of hearing ought to have afforded to the petitioner which was not done. Finally, it was submitted that, even if the State Government had cancelled the instructions issued in 1992 by a resolution dated Feurbary 11,1998, atleast for the period between 1992 to 1998, the petitioner ought to have been paid grant in accordance with the instructions then in force. It was also submitted that, even after December, 1998, benefits extended in favour of other schools were continued, and even today also they are paid grant. Had an opportunity of hearing been extended to the petitioner, the petitioner would have brought to the notice of the authorities all these facts. Since principles of natural justice were not complied with, it had resulted in injustice and prejudice to the petitioner.

5. In the facts and circumstances of the case, in my opinion, it would be in the interest of justice, if an order passed on February 11, 1999 - Annexure-E to the petition is quashed and set aside by directing the

respondents authorities to afford an opportunity of hearing to the petitioner. It is open to the petitioner to take all contentions available and after hearing the petitioner, the respondent authority will pass an appropriate order in accordance with law. Since, I am quashing and setting aside the order only on the ground of violation of principles of natural justice, I express no opinion on merits. As and when the matter will be heard by the respondent authority, it will be decided on its merits without being influenced by the observations made by me in this judgment. So far as the question of grant is concerned, the authority will decide the case within a period of three months from receipt of the writ. Letter dated December 4, 1981 is taken on record. Rule is made absolute to the aforesaid extent. In the facts and circumstances of the case, no order as to costs.

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